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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 670 OF 1998

The State of Maharashtra,)
(Through Director of Insurance, Government)
Insurance Fund, Opposite Mantralaya,)
Bombay – 32.).. Appellant

Versus

Smt. Rajani Prabhakar Bhoir & Others).. Respondents

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Smt. S.V. Sonawane, AGP for the Appellant – State.
ShriSandesh D. Patil for Respondent Nos.1, 2 and 4.

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CORAM : A.S.OKA, J.
DATE : 4TH MAY, 2010

ORAL JUDGMENT :

. Heard learned Assistant Government Pleader in support of the Appeal and the learned counsel appearing for Respondent Nos.1, 2 and 4. The Respondents are the claimants in a Claim Petition filed under Section 110-A of the

Motor Vehicles Act, 1939. On 27th June, 1981, at about 7 a.m., the deceased Prabhakar was plying his bicycle. His minor son Rajesh and minor daughter Jyoti were on his bicycle. He was on the way to drop his children to their school. When he was proceeding by Thane-Belapur Road, between the village Vitawa and Kalva, a bus came from the opposite direction. The bus was going from the North to South. The front right side bumper and head light of the bus gave a dash to the bicycle driven by prabhakar. As a result of the impact, the deceased Prabhakar lost his balance and came under the wheels of the bus and died on the spot. The bus was owned by the 5th Respondent Bombay Metropolitan Transport Corporation which was insured with the Director of Insurance of the State Government. The 5th Respondent filed a Written Statement and contested the claim. It was contended that when the driver of the bus noticed that one cyclist tried to take turn in front of the bus, he applied breaks. The road was slippery and the cyclist fell down from his bicycle. As a result of the slippery condition of the road, the bus swerved and the deceased fell down and that is how the deceased came under the wheels of the bus. The Tribunal recorded a finding that the accident occurred due to negligence on the part of the driver of the bus. The Tribunal proceeded to award compensation of Rs.1,80,000/- with interest at the rate of 12% per annum.

2. The learned AGP submitted that the fact that the deceased Prabhakar was negligent is clear from the admitted position that he was carrying

his two minor children at the same time by his bicycle. She submitted that in any event, the deceased contributed to the accident. She submitted that though there is no evidence on record to show that the deceased was earning overtime of Rs.200/- per month and was having additional income of Rs.300/- per month from a part-time job, the said amount has been taken into consideration by the Tribunal while calculating the multiplicand. She, therefore, submitted that the compensation awarded is excessive and the award is erroneous. The learned counsel appearing for the 1st to 4 Respondents supported the impugned award.

3. Perusal of the impugned award shows that the learned Judge has minutely scrutinized the oral evidence on record. As far as the issue of negligence is concerned, the 1st Respondent (the 1st Claimant) is not an eye witness. One Gajanan D. Misal was examined as an eye witness. He deposed that the deceased was not riding the bicycle. His daughter was sitting on the bar and his son was on the backside carrier. He was holding his bicycle by his hands and was going towards Kalwa. The witness stated that he was at a distance of 30 to 35 feet behind the deceased Prabhakar. At that time, the bus of Respondent No.5 came from the opposite direction in a very high speed and gave a dash to the bicycle. He stated that the bus came on its wrong side and gave a dash to the bicycle. There is hardly any cross-examination made by the Respondent No.5 of this witness.

4. On the other hand, Respondent No.5 failed to examine driver or any of the occupants of the bus. No person from the locality was examined as a witness. After carefully scrutinizing the evidence of the witness Gajanan, the Tribunal found the witness to be trustworthy. The Tribunal considered examined the spot panchanama Exhibit – 39. It shows that the deceased was on the left side of his road and in fact he was on the extreme left side of the asphalted road. The learned Member of the Tribunal found that if the bus would have been on the correct side of its road, it could have easily passed ahead without disturbing the deceased. Therefore, the learned Member of the Tribunal invoked doctrine of res ipsa loquiter. In view of the failure of the Appellant and 5th Respondent to examine the driver of the bus, it is not possible to find fault with the findings recorded by the Tribunal that the driver of the bus was negligent. The fact that the two children of the deceased Prabhakar were sitting on the bicycle has not attributed to the accident.

5. Now turning to the quantum of compensation, it has come on record that the deceased was employed by J.K. Chemicals Limited from March, 1970 and his total monthly pay was Rs.995.40 paise. The age of the deceased was undisputedly 36 to 37 years at the time of accident. The learned AGP is right in criticizing the Tribunal for taking into account the sum of Rs.200/- per month of account of overtime charges in absence of any evidence in that behalf. Though the witness Narayan Koli was examined, who stated that the deceased was doing

a part-time job with him, in the cross-examination, the witness admitted that he had not brought the books of account from January, 1981 showing that the deceased was paid an amount of Rs.300/- per month. In the examination-in-chief, the witness admitted that he was maintaining the accounts. Thus, the income of the deceased can be taken at Rs.995.40 paise which is approximately Rs.1,000/-. The deceased was in the employment of JK Chemicals Limited from 1970 onwards. Thus, the deceased was in the employment for sufficiently a long time till his death. So far as the computation of multiplicand is concerned, now the law has been crystallized by the Apex Court in the case of Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr., [(2009} 6 SCC 121]. In the case in hand, the deceased was in the permanent employment in more than 10 years prior to the accident. Therefore, 50% of the salary will have to be added towards the future prospects of the increase in the income. Thus, the income for the purposes of calculating multiplicand will have to be taken as Rs.1,500/- per month. As per the decision of the Apex Court in the case of Sarla Verma (supra), the 1/4th deduction will have to be made on account of personal expenditure of the deceased as the number of dependent is four. The Multiplier of 15 will have to be applied as per the aforesaid decision. Instead of making 1/4th deduction, even if 1/3rd deduction is made, the dependency comes to Rs.1,000/-. Applying the multiplier of 15, the compensation payable will be Rs.12,000/- x 15 = 1,80,000/- which is the amount awarded by the Tribunal. The Tribunal has not awarded any amount on account of loss of consortium etc. Therefore, the

compensation of Rs.1,80,000/- is reasonable.

6. As far as the rate of interest is concerned, the award has been made in the year 1984 and, therefore, considering the then prevailing rates of interest, no fault can be found with the interest fixed at the rate of 12% per annum.

7. There is no merit in the Appeal and the same is accordingly dismissed with no orders as to costs.

8. If any amount deposited by the Appellant is pending in this Court, the said amount with interest, if any, accrued thereon shall be transferred to the concerned Tribunal. The concerned Tribunal will pass appropriate order regarding disbursement of the amount after hearing the parties.

(A.S. OKA, J)